FIRST DIVISION
June 28, 2019

No. 1-17-0754

JOHN DOE; JANE DOE; and JOHN DOE II,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County
	)	
v.	)	No. No. 10 L 1578
	)	
CATHRYN ILANI,	)	Honorable
	)	Eve Reilly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant forfeited numerous arguments. The jury's verdict was not against the manifest weight of the evidence. The jury's verdict was not excessive.

¶ 2 Plaintiff, John Doe II, a minor, filed suit against defendant, Cathryn Ilani, alleging that he suffered severe emotional distress as a result of harassing text messages and emails he received from defendant from March 2008 to July 2008. After a jury trial, the jury found defendant's actions had amounted to intentional infliction of emotional distress and on June 14, 2016, awarded plaintiff $252,500.00. In this court, defendant argues: (1) the trial court committed reversible error, denying the defendant a fair trial, when the court allowed improper evidence; (2) the manifest weight of the evidence does not support a judgment against

defendant; and (3) the jury's verdict was excessive and should be reduced. We disagree, and for the following reasons, affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff, a minor, dated defendant's daughter. During their relationship, the two exchanged compromising photographs. Defendant discovered the photographs on her daughter's phone shortly after the two ended their relationship in May 2008. Thereafter, defendant sent plaintiff threatening and harassing text messages and e-mail messages in an attempt to force plaintiff to remain in a relationship with her daughter. Eventually, plaintiff told his parents.

¶ 5 On February 4, 2010, plaintiff's parents filed a two-count complaint, individually and as parents and next friends of plaintiff. Count I sought damages for the intentional infliction of emotional distress. Specifically, the complaint alleged in count I that beginning on or about May 2008, defendant, an adult, "instigated, pursued, and engaged in a continuous pattern of harassment and abusive and threatening conduct directed toward the Plaintiff, JOHN DOE II, a minor, in an attempt to coerce the Plaintiff to reconcile with his former girlfriend, Defendant's 13-year-old daughter." The complaint alleged further that defendant "barraged Plaintiff … with thousands of unwelcome phone, text, and e-mail communications," and that defendant "threatened to publish naked photos online of the minor Plaintiff that he had previously sent to Defendant's daughter via cell phone in an effort to coerce him to reconcile with her daughter." Finally, count I of the complaint alleged that defendant intended to cause severe emotional distress to plaintiff, or that she recklessly disregarded the probability of causing emotional distress to plaintiff, and that plaintiff did sustain severe emotional distress as a result of defendant's conduct.

¶ 6 Count II was brought under the Family Expense Act, 750 ILCS 65/15 (West 2014), and alleged substantially the same as count I, but in addition alleged that plaintiff's parents had incurred various medical expenses in bringing this action. Count II was resolved between the parties prior to trial and is not at issue on this appeal.

¶ 7 Plaintiff's bill of particulars alleged the following communication between plaintiff and defendant:[1]

> "5a. On July 21, 2008 at 12:04 p.m. Defendant *** sent a text message to Plaintiff *** stating the following: 'IF YOU TRULY CARED U [sic] WOULD FIGHT FOR HER & FIND A WAY TO WORK IT OUT but u [sic] obviously don't' care! :***(.'
>
> 5b. On July 22, 2008, at 4:56p.m., Defendant *** sent a text message to Plaintiff *** stating the following: 'U [sic] R [sic] SAFE!!! 4EVER [sic]!!! no more pic problems!!!!!!!!!! :-D.'
>
> 5c. On July 22, 2008 *** Defendant *** sent a text message to Plaintiff *** stating the following: 'JACKA!!! I'm soooooo [sic] worried about U! Just tell me ur [sic] OK and know about being free of the pics 4ever [sic]!! YAY!!!!!!. :-D then ill [sic] never ever bother u [sic] again! :***(.'
>
> 5d. On July 6, 2008, at 9:45 p.m., Defendant *** sent an e-mail to Plaintiff *** stating the following:
>
> 'Subj: fears
>
> i know that i must sound like a broken record but my biggest fear is you breaking her heart! As much of a romantic dreamer as I am, I am also very realistic and I

[1]We set forth the allegations verbatim as they appear in the record, without alteration except to omit certain redundant phrases.

know that nothing lasts forever ... especially teen relationships! If teens date for 6 months thats [sic] a long time! I know that Joey and Anna had dated for 2 years (which is incredible for teens!!) Tali had once said months ago that she wanted to beat their record! lol You are so sweet and so naiive [sic] and incredibly charming and I think that those three traits combined with your personality and looks are going to get you lots of female attention!!! There are TONS of girls who would like to be your girlfreind [sic] and if they can't they would just like to cause trouble for your current girlfriend. =[

Tali gets guys flirting with her or trying to all the time and she ignores every single one!!! The reason is YOU! She would never want to jeopardize what she has with you. Especially now with my health the way it is she doesn't want to lose you too.

Jack you IMed eaarlier [sic] that you wont [sic] text girls anymore. Thats [sic] not the point. You can text every once in a while just like Niall might say THANX or something to Tali. But having texting conversations is completely different. As I said think if you would want Tali doing it and act accordingly. And remember ... text [sic] can come back to haunt you! lol

i know you have promised me that you two will be dating for a long time! Well long can be a month or two. And truthfully even if you "promised" me you would be together for 2 or 3 years i don't know if i would believe you. Because

you have broken promises before. Besides I remember Tali saying that you got sick of her and thats [sic] why broke up with her in March. So if you got sick of her after 3 months I could just magine [sic] how sick you would be of her in 6 months or a year!! But hopefully she has learned from her mistakes and is a better girlfriend than before. I'm glad you told her about flirting with Niall. Anything that you tell Tali she will do for you because she cares about you that much. ALWAYS tell her your feeling [sic] Jack. I wish that I will be here to help you two but I know that realistically I only have several months to live. I hope you don't get tired of her ... shes [sic] a very committed person so I know that she will remain true to you until you decide you are no longer interested. Just be sensitive Jack! Please don't do it right after I die. Also PLEASE remain friends!!! NO MATTER WHAT!!! It means the world to me!

I know that it sounds silly but I fear the day you break up with her more than I fear my death.'

5e. On July 12, 2008 at 8:40 p.m. Defendant sent an email stating the following:

Subj. STOP???!!!

Ok .....

I needed to wait awhile to respond to your text because I did not want to respond out of anger. :***(Jack I think you are a good kid ... I really do!!! I also think that you like Tali (a lot!) You might even "love" her ... like you love candy or junk food, but I do NOT think that you are in love with her.

:***(

I have been teaching for over twenty years and I have seen teens "in love" and I must say that IF you truly loved her you would not be happy about your mother restricting your time together ... she barely lets you see her 1 time a week. AND YOU THOUGHT THAT WAS FAIR???!!! :***(All the teens that I know that are "in love" can't wait to see and spend time together, can't keep their hands off of eachother [sic], cant wait to talk or text eachother [sic] the moment they wake up and want to talk/text until they go to sleep, they also cant WAIT to see eachother [sic] and would like to 24/7 but at a minimum 2 or 3 times a week. 1 to ZERO times would be sheer torture!!! So basically, I'm thrilled that my dream came true! I'm grateful for your help!!! I'm thrilled that you and Tali are bf/gf! I'm just sad that your relationship isn't as important to you as it is to Tali. And more than ANYTHING I am terrified of what is going to happen after I'm gone!!! Because if this is how little you care about her while I'm here nagging and pushing I can only imagine how it will be when I'm no longer around.

:**********(.

5f. On July 14, 2008 at 8:59 a.m. Defendant *** sent an email stating *** the following:

Subj: =]]]

Well I just wanted to let you know that I'm really proud of you!!! =]]] Yesterday started off a little weak as far as "proving" went but you absolutely finished strong!!! At this rate you will be boyfriend of the year by Friday! lol Seriosly [sic] though I'm proud of the way you went and spoke to your mom to express your feelings and how you made Tali giggle last night! I'm glad that you are

learning to be open and honest with your family and friends ... and most importantly YOURSELF! I hope that you will continue to always be truthful. You do NOT need to fear the pics and videos Jack! As long as you remain open and honest and prove you have learned your lesson then they are forgotton [sic] history!!! I PROMISE!!! ... and I always keep my promises! =]]]

5g. On September 8, 2008, Defendant left voicemail message on [plaintiff's cell phone that stated]: 'Hey you have been so like, um, mean and obnoxious last night that I have searched and searched and searched on YouTube and I finally found the videos so I've posted them on my MySpace and show the kids in school today because I think like that was so mean. Anyway, um, we'll talk to you later, maybe see you at the dance coming up. So, bye.'

5h. On September 19, 2008, Defendant *** left a voice message on [plaintiff s phone that stated]: 'Hi. Hope we get to see you tonight. We're all looking forward to it, um, it's more fun than looking at you on YouTube. [laughter] Anyways, see you in a little bit. Bye bye.'

5i. On September 28, 2008 Defendant *** left a voice message on [plaintiff s phone that stated]: 'Hi. Hey, I just wanted you to know Kristi and I, we printed out the pics and stuff and we sent it yesterday to Mrs. Sanders. And, so it should be arriving, I don't know, like about Tuesday or Wednesday, I don't know. Just wanted to give you a heads up so, I don't know. Talk to you later. Bye.' "

¶ 8 Plaintiff also filed an affidavit regarding damages, indicating that the total money damages sought exceeded an amount in excess of $50,000.00.

¶ 9 Defendant filed her answer to the complaint on November 17, 2010, and denied all of the allegations.

¶ 10 On February 7, 2013, plaintiff filed his notice and disclosure of Illinois Supreme Court Rule 213 witness pursuant to Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2007), and disclosed Dr. Roger P. Hatcher as his expert witness who would testify to the mental, emotional, and psychological problems experienced and likely to be experienced by plaintiff in the future as a result of defendant's actions.

¶ 11 Arbitration took place on June 4, 2015, and the arbitrators awarded plaintiff the maximum of $30,000 under count I and awarded $6,360 to plaintiff s parents under count II. On June 30, 2015, plaintiff filed his rejection of the arbitration award and requested a trial.

¶ 12 At trial, John Doe II testified that in 2008, defendant found sexually explicit pictures of her daughter and plaintiff on her daughter's cell phone and contacted the plaintiff to confront him about the pictures. From March until mid-July 2008, when he was 12 years old, John Doe II communicated with the defendant via email, text, and instant messenger regarding his relationship with defendant's daughter. He finally told his parents about the pictures and communication with defendant in July 2008. Defendant repeatedly threatened to tell his parents about the pictures, or to have her son attack him if he did not continue to see her daughter. Over 350 pages of emails and text messages received from defendant were admitted into evidence. None of those 350 pages that were admitted into evidence are found in the record before us.

¶ 13 Plaintiff stated that he suffered from headaches, stomach aches, and chest pains since the alleged harassment took place. He also testified that he feared for his life, could not sleep, slept with a night light, and was afraid to be alone. He also stated that he thought about taking his own

life. He saw a therapist for a few months but was never prescribed medication or additional treatment for his anxiety or depression.

¶ 14 Dr. Hatcher, a child psychiatrist, testified that he met with plaintiff and his mother in 2013, three years after the complaint was filed, and diagnosed plaintiff with general anxiety disorder as a result of the bullying and harassment he endured in 2008 as a result of the text and emails relating to plaintiff and defendant's daughter.

¶ 15 Christopher S. testified about email correspondence he had with defendant regarding his failed 2010 relationship with defendant's daughter wherein defendant threatened criminal action against him. During defendant's case, defendant admitted sending Christopher S. text messages telling him not to break up with her daughter.

¶ 16 Yvette C. testified about telephone conversations she had with defendant in 2010. Defendant told her that Christopher S. possessed sexually explicit photos of her daughter on a computer owned by his employer. Defendant, however, did not provide copies of the photos to Yvette when she requested them.

¶ 17 Plaintiff called defendant as an adverse witness. Defendant reviewed all of the messages contained in Exhibit A and admitted sending some of the messages, but contended that some of the messages could have been sent by her son or daughter. She also admitted her phone number and Gmail address were associated with certain texts and phone logs in evidence.

¶ 18 Following her testimony, plaintiff was recalled and testified about the police report filed in September 2008.

¶ 19 Afterwards, plaintiff called John Doe, plaintiff's father, who testified about phone logs he created and the plaintiff's demeanor.

¶ 20 Plaintiff then called Jane Doe, plaintiff's mother, who testified about communications she received from defendant, and plaintiff's demeanor during the incidents. Afterward the plaintiff rested.

¶ 21 Defendant called plaintiff, who testified about his school record and achievements since the allegations in 2008.

¶ 22 Defendant then called her expert, Victoria Dietich, who testified that based on her Rule 215 examination of plaintiff, his symptoms did not meet the requirements needed for the charge of infliction of emotional distress.

¶ 23 Afterward, defendant rested her case, and the jury heard closing arguments. Following deliberations, the jury rendered its verdict in favor of plaintiff and against defendant in the amount of $252,500.00 plus costs. The damages were itemized as follows: (1) pain and suffering: $212,500.00; (2) loss of normal life experienced: $0.00; (3) loss of normal life to be experienced in the future: $0.00; (4) emotional distress: $0.00; and (5) future medical expenses: $40,000.00.

¶ 24 Defendant filed her consolidated posttrial motions on July 29, 2016. The issues raised in defendant's posttrial motions were: (1) improper argument during closing rebuttal; (2) remittitur pursuant to Illinois Supreme Court Rule 222; (3) remittitur based on common law; (4) inconsistent verdicts; (5) remittitur of punitive damages; and (6) "errors at trial." Count six of defendant's post-trial motion consists of nine alleged errors.

¶ 25 Plaintiff filed his response on September 1, 2016. The court held a hearing on the consolidated posttrial motions on January 24, 2017. On February 27, 2017, the court denied defendant's posttrial motion. Defendant timely filed her notice of appeal on March 23, 2017.

¶ 26 II. ANALYSIS

¶ 27 As an initial matter, we note that the defendant's statement of facts in her appellate brief is woefully lacking. Illinois Supreme Court Rule 341(h)(6) provides that the statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument and comment, and with appropriate reference to the pages of the record on appeal ***." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Although defendant provided us with an adequate procedural history, she failed to provide a thorough recitation of the testimony and evidence presented at trial necessary to understanding the somewhat complicated and numerous issues here. In addition, the statement of facts contains argument, contrary to the constricts of Rule 341(h)(6).

¶ 28 Our supreme court's rules are not advisory suggestions, but rules to be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57; *In re Estate of Michalak*, 404 Ill. App. 3d 75, 99 (2010). "Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal." *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005) (citing *In re Marriage of Gallagher*, 256 Ill. App. 3d 439, 442 (1993)). "While this court is not bound to enforce strict, technical compliance with the rules where, despite minor inadequacies in an appellate brief, the basis for an appeal is fairly clear [citation], a party's failure to comply with basic rules is grounds for disregarding his or her arguments on appeal." *Epstein*, 362 Ill. App. 3d at 42. Although defendant's statement of facts is deficient, after reading the record on appeal, we are able to adequately understand the issues and decline to strike defendant's brief. Defendant's brief suffers from a host of other issues that we will discuss individually.

¶ 29 Turning to the merits, defendant argues that the trial court committed error, thereby denying her a fair trial, when the court made numerous improper rulings on the admission of evidence. Specifically, defendant argues that the court erred when it allowed plaintiff to introduce into evidence the text messages and emails. Second, the defendant claims the court wrongfully allowed plaintiff's expert witness, Dr. Hatcher, to comment on defendant's character without ever examining defendant and improperly allowed plaintiff's rebuttal witness to testify before defendant. Third, defendant claims that the court allowed the plaintiff to introduce testimony from witnesses in violation of the discovery rules. Fourth, defendant argues that the trial court erroneously allowed plaintiff's counsel to use prejudicial language during closing argument, calling defendant an "abuser" and allowing plaintiff's witness to label defendant as a "pedophile," resulting in jury bias against defendant. Finally, defendant argues that the court improperly denied defendant the right to answer questions posed to her on direct examination.

¶ 30 Our review of the record and defendant's posttrial motion leads us to conclude that defendant has failed to preserve these issues for appellate review by either failing to object during trial or failing to raise these issues in her posttrial motion. Section 2-1202 (b) of the Code of Civil Procedure (Code) mandates that a posttrial motion contain the points relied upon, "particularly specifying the grounds in support thereof." 735 ILCS 5/2-1202(b) (West 2012). Our supreme court in *Brown v. Decatur Memorial Hospital*, 83 Ill. 2d 344 (1980), outlined the threefold purpose of the posttrial motion specificity rule: they allow the trial court, which is most familiar with the trial, to review its decisions "without the pressure of an ongoing trial[;]" they allow a reviewing court to ascertain from the record whether the trial court has been afforded an opportunity to reassess its ruling in question; and they "prevent[ ] [litigants] from stating mere general objections and subsequently raising on appeal arguments which the trial judge was never

given an opportunity to consider." *Brown*, 83 Ill. 2d at 349-50. Furthermore, Supreme Court Rule 366(b)(2)(iii) (eff. Feb. 1, 1994) provides, "A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion."

¶ 31 Here, Defendant made only general allegations of error in her posttrial motion stating, "that the court erred in overruling the objections of the Defendant during the course of the trial." We therefore find that these issues are nothing more than nonspecific, general objections that were not presented to the trial court, and are therefore forfeited.

¶ 32 Without admitting that she failed to raise these issues in her posttrial motion, defendant devotes an entire unrelated section of her brief to plain error analysis and engages in a lengthy discussion as to why this court should consider her issues as plain error. While there is case law permitting a reviewing court to consider forfeited issues under the plain error doctrine in civil cases, it finds much greater application in criminal cases. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855-56 (2010) (citing *Gillespie v. Chrysler Motors Corp*., 135 Ill. 2d 363, 375 (1990)). The plain error doctrine may be applied in civil cases only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself. *Wilbourn*, 398 Ill. App. 3d at 856. This court has observed that the application of the plain error doctrine to civil cases should be exceedingly rare. *Id.*

¶ 33 Without identifying what prejudicial errors she is referring to, defendant states that she has:

> "raised numerous prejudicial errors that occurred both before and during trial. The most prominent errors include the reliance on unsupported and inflammatory language in front of the jury, and the introduction of improper evidence and

> testimony at trial. These circumstances meet the criteria of both prongs of the [p]lain [e]rror [d]octrine. First, the Plaintiff's case against the Defendant was based primarily on error-ridden evidence and conjecture, so much so that the jury's decision was most likely the result of prejudicial error. Second, the errors in and of themselves, which include evidence and testimony introduces [*sic*] in violation of the rules of evidence, are so egregious that prejudice can be assumed."

¶ 34 It is not the job of this court to craft or expound on defendant's argument. Other than the very vague and general claims of "alleged inflammatory language at trial," and "improper evidence and testimony at trial," we are unsure of what "language," "evidence" or "testimony" defendant claims amounts to plain error, nor are we privy to, based on defendant's brief, how those issues are so egregious as to question the integrity of the judicial process. *E.g.*, *Wilbourn*, 398 Ill. App. 3d at 856. Furthermore, defendant does not cite to the record or develop any coherent argument that would allow us to properly review her contentions. It is not our responsibility to find and make defendant's arguments for her. We therefore decline defendant's invitation to apply plain error in this case.

¶ 35 The remainder of defendant's arguments was raised with more specificity in her posttrial motion. However, they all rest on whether the trial court abused its discretion and, as previously stated, a hearing was held on defendant's posttrial motion, but defendant has failed to include the transcript of the hearing on the posttrial motion or provide a bystander's report. Defendant has the burden of providing "a sufficiently complete record to support a claim of error." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984)). As such, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. at 392. Here, we cannot

determine whether there has been an abuse of discretion without an understanding as to the rationale for the trial court's ruling on these evidentiary issues.

¶ 36 Defendant argues that the trial court erred when it failed to provide an appropriate jury instruction regarding adverse witnesses. Defendant claims that when plaintiff called her to testify as an adverse witness, defense counsel requested that the court give an instruction to the jury explaining the meaning of an adverse witness. The judge then explained to the jury that, "Obviously, they are not on the same side. So that is the difference between them calling their own witness and an adverse witness." Defendant claims that an instruction was necessary to explain to the jury plaintiff's counsel's treatment of defendant while she was on the stand. Defendant argues that, without this explanation, the jury was made to believe that defendant was an abuser through her examination by plaintiff's counsel, which amounted to prejudice to defendant.

¶ 37 Defendant's claim is belied by the record. Defense counsel never asked that the jury be instructed about who is an adverse witness, nor did counsel propose any specific instruction. Rather, defense counsel simply asked the judge to "explain to the jury what an adverse witness is," and the trial court did just that. Defendant neither objected to the court's explanation, nor requested that the court use any specific jury instruction. Defendant's argument on appeal that the jury should have been informed that an adverse witness can be questioned as if on cross-examination (735 ILCS 5/2-1102 (West 2014)), and that leading questions can be posed to an adverse witness (Ill. R. Evid. 611 (eff. Jan. 1, 2011)), lacks merit. Furthermore, as defendant did not object at trial and did not raise this issue in her posttrial motion, we find that this claim is forfeited.

¶ 38 Defendant next argues that plaintiff's counsel made improper comments during closing argument. The following is the entirety of defendant's appellate argument on this issue:

> "Further, as pointed out in Defendant's Post-Trial Motion, Plaintiff improperly attacked the honesty and veracity of opposing counsel. In his closing argument, Plaintiff stated "[W]hen you don't have the truth, you have to come up with something, right?" In a display of distinctly bad taste, Counsel has gone so far as to compare the Defendant's case to the Jonestown Massacre, "Don't drink the Kool-Aid. That story is not true. What we've put on is true." Remarks such as this are not only unprofessional, they have a malignant effect on the judicial process.
>
> Remarks that a jury was prevented from hearing evidence because of Defendant's actions have been repeatedly held to be reversible error. See *Anderson v. Univ*[*ersal*] *Delta*, 90 Ill. App. 2d 105, 111 (1st Dist. 1967). 'While no single act would necessarily require reversal, the cumulative impact of the errors may have affected the jury's verdict.' *People v. Clark*, 114 Ill. App. 3d 252, 256 (1st Dist. 1983) (quoting *People v. Weinger*, 101 Ill. App. 3d 857 (1st Dist. 1981))."

¶ 39 First, our review of defendant's closing argument discloses that no objection was made to plaintiff's counsel's comment about "Kool-Aid." "Failure to object to improper closing argument results in forfeiture of the objection on appeal." *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶ 121. This particular claim is forfeited.

¶ 40 With respect to defendant's remaining argument, defendant did voice a general objection to the comment at trial and the objection was sustained. However, the argument raised on appeal

is wholly undeveloped, as defendant fails to set forth any reasoned argument as to why this comment amounts to error or resulted in any prejudice to defendant. Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S.Ct. R. 341(h)(7) (eff. July 1, 2008). As defendant has failed to comply with Rule 341(h)(7), we decline to address this issue.

¶ 41 Nevertheless, the trial court cured any possible error by properly instructing the jury before closing argument that the arguments of counsel were not evidence. Before closing argument began, the trial court admonished the jury as follows: "A closing argument is given at the conclusion of a case and is a summary of what the attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument." The transcript of the instructions given following closing argument is not part of the record before us. We are confident, viewing the closing argument as a whole, that defendant suffered no prejudice as a result of the complained of comment.

¶ 42 Defendant next argues that the verdict in this case is against the manifest weight of the evidence because plaintiff failed to prove all of the elements of intentional infliction of emotional distress.

¶ 43 A reviewing court will reverse a jury verdict only if it is against the manifest weight of the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003). A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Id.* It is well

established that the reviewing court may not simply reweigh the evidence and substitute its judgment for that of the jury. *Id.*

¶ 44 The crux of this case involves the emails and text messages sent from defendant to plaintiff John Doe II. According to the trial transcript, plaintiff submitted Exhibit A, 350 pages of text messages and emails sent from defendant to plaintiff. Exhibit A was admitted into evidence. Our review of the record before us reveals that this exhibit does not appear in the record before this court. Defendant's references to these texts and emails do not point us to their location in the record; rather, she directs our attention to the trial testimony regarding these texts and emails. Defendant has the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error. *Foutch*, 99 Ill. 2d at 391-92. In the absence of a complete record on appeal, we will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. See *Webster v. Hartman*, 195 Ill. 2d 426, 433-34 (2001).

¶ 45 Even so, the evidence shows the verdict was not against the manifest weight of the evidence. Our supreme court has articulated three requirements for a claim of intentional infliction of emotional distress. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 50. "First the conduct involved must be truly extreme and outrageous." *Id.* "Second, the actor must either intend that his conduct inflict severe emotional distress or know that there is at least a high probability that his conduct will cause severe emotional distress." *Id.* "Third, the conduct must in fact cause severe emotional distress." *Id.* The conduct must be so outrageous in character and so extreme in degree as to go beyond the bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Id.* ¶ 51. Likewise, the distress caused by the conduct must be so severe that no reasonable person could be expected to endure it. *Id.*

¶ 46 In *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 21 (1992), our supreme court identified several factors that should be considered in determining whether a defendant's conduct may be deemed outrageous. The extreme and outrageous nature of the conduct may arise from the defendant's abuse of some position that gives him authority over the plaintiff or the power to affect the plaintiff's interests. *Id*. (citing *McGrath v. Fahey*, 126 Ill. 2d 78, 86-87 (1988)). A factor to be considered is also the reasonableness of a defendant's belief that his objective is legitimate. *McGrath*, 126 Ill. 2d at 89. Another factor to be considered is the defendant's awareness that the plaintiff is particularly susceptible to emotional distress. *Kolegas*, 154 Ill. 2d at 21 (citing *McGrath*, 126 Ill. 2d at 89-90). Those factors are to be considered in light of all of the facts and circumstances in a particular case, and the presence or absence of any of these factors is not necessarily critical to a cause of action for intentional infliction of emotional distress. *McGrath*, 126 Ill. 2d at 90. The outrageousness of a defendant's conduct must be determined in view of all the facts and circumstances pled and proved in a particular case. *Id*.

¶ 47 Defendant argues that, after finding out about the inappropriate photos of her daughter, her actions were not extreme and outrageous. Defendant states, "it can hardly be said that Defendant's response, after finding out that Plaintiff received inappropriate photos of her daughter, discussing the matter with him and informing his parents, was extreme and outrageous." We disagree, and note that the evidence does not support defendant's statement that she informed plaintiff's parents about the photos.

¶ 48 The jury's finding that defendant's conduct was both extreme and outrageous was not against the manifest weight of the evidence. Defendant sent emails to plaintiff, such as the email sent July 14, 2008, which stated, "[y]ou do NOT need to fear the pies and videos Jack! As long as you remain open and honest and prove you have learned your lesson then they are forgotton

[sic] history!!! I PROMISE!!! ...and I always keep my promises! =]]]." This followed the statement "[w]ell I just wanted to let you know that I'm really proud of you!!! =]]] Yesterday started off a little weak as far as "proving" went but you absolutely finished strong!!! At this rate you will be boyfriend of the year by Friday!" This is but one excerpt from one email out of thousands of texts and emails, yet it clearly demonstrates defendant's outrageous conduct: attempting to manipulate, threaten and extort plaintiff by using the photos.

¶ 49 Defendant claims that the while plaintiff testified that defendant continuously threatened to tell his parents about the photos if he did not continue to see her daughter, the evidence failed to show that the defendant was using her position of power over the plaintiff or that he reasonably believed that she would carry out those threats. Again, we disagree. Defendant most certainly used her position of power, as an adult and the mother of plaintiff's ex-girlfriend, to affect the plaintiff's interests. See *Kolegas*, 154 Ill. 2d at 21 (citing *McGrath,* 126 Ill. 2d at 86-87). Defendant's threatening texts and emails forced plaintiff to continue his relationship with defendant's daughter, even dictating the number of times per week he was required to see her. Plaintiff's actions were driven by his desire to protect himself and his parents from defendant releasing the photos.

¶ 50 Defendant argues that although plaintiff was required to show that defendant knew there was a "high probability" that the conduct would cause severe emotional distress, plaintiff failed to show that defendant intended or even knew that she would cause severe emotional distress.

¶ 51 Plaintiff introduced into evidence 350 pages of threatening texts and emails allegedly sent by defendant. As previously stated, these pages are not part of the record on appeal. Although defendant admitted to sending some and denied sending others, the content of the texts and emails testified to by plaintiff, establish that defendant was aware that she was

manipulating and extorting plaintiff by forcing him to act in certain ways by threatening to inform his parents about the pictures. Defendant's complaint that she was stopped by plaintiff from identifying texts and emails she did not send, this occurred while she was testifying as an adverse witness and she was stopped after she answered a direct question before she could volunteer which emails she did not send. Of course, defense counsel was free to ask this question when he got his turn during plaintiff's case or when defendant testified in her case in chief. In any event, it was for the jury to determine the weight to be given the exhibits. Defendant presumably could have identified which emails or texts she did not author, but she has failed to identify them. Thus, it was for the jury to decide the weight to be given to Exhibit A and the other exhibits introduced at trial. The evidence was sufficient to establish and for the jury to find that defendant knew or should have known her actions would cause plaintiff severe emotional distress.

¶ 52 The evidence was also sufficient for the jury to find that defendant's conduct caused emotional distress. With respect to his injuries, plaintiff testified that he started sleeping with a nightlight and quit playing football because he was afraid defendant would be at the games. He further testified that he started to do poorly in school around the time these incidents occurred. Plaintiff went to therapy several times, although he was not treated for anxiety or depression. We find that the verdict in this case was not against the manifest weight of the evidence. The opposite conclusion is not clearly evident, nor are the jury's findings unreasonable, arbitrary, or not based upon any of the evidence.

¶ 53 Defendant next argues that the trial court erred in denying her request for special interrogatories. Defendant sought ten special interrogatories in her 23rd supplemental jury instructions, which were denied by the trial court. The special interrogatories drafted by

defendant included questions such as whether (1) "the conduct involved was truly extreme and outrageous;" (2)"Defendant intended her conduct inflicted [*sic*] severe emotional distress;" and (3) defendant's "conduct in fact caused severe emotional distress." Defendant claims that special interrogatories should have been given in this case as the jury did not provide for emotional damages, only pain and suffering and future medical expenses.

¶ 54 Special interrogatories are governed by section 2-1108 of the Code, which states:

> "Unless the nature of the case requires otherwise, the jury shall render a general verdict. The jury may be required by the court, and must be required on request of any party, to find specially upon any material question or questions of fact submitted to the jury in writing. Special interrogatories shall be tendered, objected to, ruled upon and submitted to the jury as in the case of instructions. Submitting or refusing to submit a question of fact to the jury may be reviewed on appeal, as a ruling on a question of law. When the special finding of fact is inconsistent with the general verdict, the former controls the latter and the court may enter judgment accordingly." 735 ILCS 5/2-1108 (West 2014).

¶ 55 Special interrogatories serve "as guardian of the integrity of a general verdict in a civil jury trial." *O'Connell v. City of Chicago*, 285 Ill. App. 3d 459, 460 (1996). They test the general verdict against the jury's determination as to one or more specific issues of ultimate fact. *Noel v. Jones*, 177 Ill. App. 3d 773, 783 (1988). A special interrogatory is in proper form if (1) it relates to an ultimate issue of fact upon which the rights of the parties depend, and (2) an answer responsive thereto is inconsistent with some general verdict that might be returned. *Id*. Special findings are inconsistent with a general verdict only where they are

"clearly and absolutely irreconcilable with the general verdict." *Powell v. State Farm Fire & Casualty Co.*, 243 Ill. App. 3d 577, 581 (1993).

¶ 56 Initially, we note that defendant failed to raise this issue with specificity in her posttrial motion. Section 2-1202 (b) of the Code mandates that a posttrial motion contain the points relied upon, "particularly specifying the grounds in support thereof." 735 ILCS 5/2-1202(b) (West 2012). Defendant has failed to set forth any facts surrounding the special interrogatories in her posttrial motion and therefore has not properly preserved the issue for appeal.

¶ 57 Furthermore, in her brief, defendant cites to her proposed "special interrogatories" that are part of the common law record. Defendant does not, however, cite to any portions of the transcripts of proceedings that might reflect whether the special interrogatories were discussed. She offers no explanation for her failure to include a report of the proceedings of the trial court's instructions to the jury, or of any discussion pertaining to the special interrogatories and verdict forms. In the absence of a more complete record regarding the basis for the court's order denying defendant's motion, we must presume that the court's action "was in conformity with the law and was properly supported by evidence," and that any doubts arising from an incomplete record should be resolved against the appellant. *Foutch*, 99 Ill. 2d at 393. Any doubts arising from the inadequacy of the record will be resolved against the defendant. *Id*. at 391-92. "While we may consider the issues raised by defendants by reference to the common law record [citation], any doubts raised by insufficiencies in the record must be resolved against defendants who had the obligation to present this court with a sufficiently complete record of the trial court proceedings to support their claims of error[.]" *Williams v. Dorsey*, 273 Ill. App. 3d 893, 896-97 (1995). (citing *Foutch*, 99 Ill. 2d at 391-92).

¶ 58 Because defendant has failed to provide the necessary report of proceedings or bystander's report, we are unable to review the trial court's findings on the issue. "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Webster*, 195 Ill. 2d at 432. "Where the record is incomplete, the reviewing court will indulge every reasonable presumption favorable to the judgment, order, or ruling from which the appeal is taken." (Internal quotation marks omitted.) *In re Marriage of Cepek*, 230 Ill. App. 3d 1045, 1046 (1992). Furthermore, "it will be presumed that the trial court heard sufficient evidence and argument to support its decision. [Citation]." (Internal quotation marks omitted.) *Id*. Accordingly, given the lack of transcripts, we presume that the circuit court's decision to deny defendant's request for special interrogatories complied with the law and was supported by evidence.

¶ 59 Defendant next argues that the jury verdict was excessive and should be reduced because the jury returned a disproportionately large damages verdict in the amount of $252,500.00. Defendant argues that this was well beyond the damages the plaintiff sought in his complaint and his affidavit and that verdict was outside the limits of fair and reasonable compensation.

¶ 60 The determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court. *Lau v. West Towns Bus Co.*, 16 Ill. 2d 442, 452–53 (1959); *Marchese v. Vincelette*, 261 Ill. App. 3d 520, 529-30 (1994). An award of damages will be deemed excessive if it falls outside the range of fair and reasonable compensation or results from passion or prejudice, or if it is so large that it shocks the judicial conscience. *Richter v. Northwestern Memorial Hospital*, 177 Ill. App. 3d 247, 257(1988). When reviewing an award of compensatory damages for a nonfatal injury, a court may consider, among other things, the permanency of the plaintiff's condition, the

possibility of future deterioration, the extent of the plaintiff's medical expenses, and the restrictions imposed on the plaintiff by the injuries. *Marchese*, 261 Ill. App. 3d at 530.

¶ 61 In this case, it was the jury's function to consider the credibility of the witnesses, weigh the evidence and determine an appropriate award of damages. We cannot find that the jury's award to plaintiff was the result of passion or prejudice, that the award "shocks the conscience," or lacks support in the evidence. There was sufficient evidence for the jury to find that defendant, an adult, sent threatening and harassing emails and texts to a twelve year old minor in an attempt to extort him into continuing a romantic relationship with her daughter. Defendant's conduct was extreme and outrageous: she knew that her conduct was intended to cause or would cause severe emotional distress, and her conduct did in fact cause emotional distress.

¶ 62 Defendant next argues that this court should issue a remittitur based upon Illinois Supreme Court Rule 222(b) (eff. July 1, 2006). Defendant argues that "plaintiff should be precluded from recovering more than $50,000 in damages, in his tort action against Defendant where he filed an affidavit that stated that he sought significantly less than $50,000 in damages." We disagree.

¶ 63 Illinois Supreme Court Rule 222(b) provides the following:

> "Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed $50,000. If the damages sought do not exceed $50,000, this rule shall apply. Any judgment on such claim which exceeds $50,000 shall be reduced posttrial to an amount not in excess of $50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any

prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial." *Id.*

¶ 64 Defendant claims that it is undisputed that on July 23, 2012, over two years after the initial complaint was filed, plaintiff filed an affidavit for $6630.00 in damages prior to the case being transferred to the municipal division and ordered into mandatory arbitration, making the case subject to Rule 222. Again, defendant's claim is disproven by the record.

¶ 65 The record clearly shows that plaintiff provided an affidavit appended to his sworn complaint wherein he stated, "the total money damages sought in this civil action exceeds an amount in excess of $50,000." Later, on December 12, 2013, in an order granting defendant's motion to transfer the case to the municipal division, the court stated, "Defendant's motion to transfer case to Municipal District is granted, but *ad damnum* clause is not amended and remains in excess of $50,000." The "affidavit" that defendant refers to is merely an accounting of special damages related to count II, which is not part of this appeal. We decline to issue a remittitur.

¶ 66 Defendant further argues that it is legally inconsistent for the jury to find the defendant guilty of intentional infliction of emotional distress while simultaneously finding that there were no damages for emotional distress. Defendant argues that there is no explanation as to why the jury awarded plaintiff $212,500 for pain and suffering and $40,000 for future medical expenses and $0.00 for "emotional distress." Defendant argues "[i]f the award was based on the evidence that the defendant actually caused emotional distress, presumably the jury would have awarded something in that column, but it did not. In other words, the jury found that no emotional distress was experienced. Therefore, the jury verdict is inherently inconsistent and a new trial must be granted."

¶ 67 There are generally two types of civil cases that will contain legally inconsistent verdicts. For the purposes of this case, the relevant cases are "those involving a single claim in which the single verdict is alleged to be internally inconsistent or 'inherently self-contradictory,' as when the damages awarded are not reasonably related to the liability found." *Redmond v. Socha*, 216 Ill. 2d 622, 643-44 (2005) (citing *Galloway v. Kuhl*, 346 Ill. App. 3d 844, 850 (2004). The determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court. *Lau*, 16 Ill. 2d at 452-53; *Marchese*, 261 Ill. App. 3d at 529-30.

¶ 68 Contrary to defendant's argument,

> " 'suffering' includes 'emotional distress.' In fact, 'suffering' is another word for 'distress.' A dictionary defines 'distress' as 'pain or suffering affecting the body, a bodily part, or the mind' and lists 'suffering' as a synonym. Merriam-Webster's Collegiate Dictionary (10th ed. 2000). The same dictionary defines 'suffer' as 'to endure death, pain, or distress.' *Id*. at 1177. Suffering means distress, whether physical or emotional. Suffering can be physical, in the form of pain, fatigue, or other bodily distress. Suffering also can be mental, in the form of fear, shock, anxiety, frustration, grief, depression, or boredom. See *Holston v. Sisters of the Third Order of St. Francis*, 247 Ill. App. 3d 985 (1993). Emotional distress or mental anguish is a component of suffering, not an element of damages unto itself. See *id*. (holding that '*mental suffering* caused by physical injury even without pain is compensable" (emphasis added))." *Marxmiller v. Champaign-Urbana Mass Transit District*, 2017 IL App (4th) 160741, ¶ 52.

¶ 69 In *Snover v. McGraw*, our supreme court held:

> "that a jury may award pain-related medical expenses and may also determine that the evidence of pain and suffering was insufficient to support a monetary award. We believe that it lies within the jury's power and discretion to award nothing for pain and suffering in this circumstance where the evidence supports such an award. Accordingly, we find that the jury's verdict is not inconsistent." 172 Ill. 2d 438, 448 (1996).

Here, as in *Snover*, the fact that the jury chose not to give a monetary award for plaintiff's emotional distress is not inconsistent with an award for pain and suffering because the term "suffering" is another form of "distress of the mind." Based on the evidence presented, the jury could reasonably consider pain and suffering to include emotional distress, and could decide to avoid a duplicative award for emotional distress. As such, the verdicts are not inconsistent.

¶ 70 III. CONCLUSION

¶ 71 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 72 Affirmed.